

CONTRACT AWARD GUIDELINES

Funds for Connecticut Sustainment Restoration Modernization Projects

as part of

Special Military Cooperative Agreement – National Guard Bureau

Made Available Under

The American Recovery and Reinvestment Act of 2009



Purpose of the Guidance

The purpose of this guidance is to provide information on the requirements of awards received from the Military Department as they relate to funding by the American Recovery and Reinvestment Act of 2009 and those regulations set forth by the National Guard Bureau.

PROJECT TITLE:_____

PROJECT NUMBER:_____

This project is funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009 (ARRA).

Introduction

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), Public Law 111-5. As one of its many elements, the American Recovery and Reinvestment Act (ARRA) provides funding, via the National Guard Bureau Special Military Cooperative Agreements, through formula block grants to assist state governments in their ongoing efforts to Sustain, Restore, and Modernize the state's aging military facilities.

The ARRA appropriates significant new funding for various programs. The State of Connecticut Military Department, through a Special Military Cooperative Agreement with The National Guard Bureau (NGB), has secured funding for various Connecticut Sustainment Restoration Modernization Projects. ARRA requires that recipients of funds made available under the Act separately account for, and report on, how those funds are spent. The Military Department has assigned an Agency Accountability Officer who is responsible for the compliance of the regulations set forth in the Act. Sub-recipients and vendors will need to periodically provide information and/or documentation of ARRA activities as required. This is further outlined under the Reporting section. This will ensure data quality and the proper reporting of the ARRA funds.

The NGB mandates that certain sections of Article VIII – Representations and Certifications be included in the award terms. Those requirements are attached as Appendix A.

Recovery Act Reporting Requirements; Section 1512 of the Recovery Act

The Recovery Act places great emphasis on accountability and transparency in the use of taxpayer dollars. Among other things, it creates a new Recovery Accountability and Transparency Board and a new website -- Recovery.gov -- to provide information to the public, including access to detailed information on grants and contracts made with Recovery Act funds.

As indicated in the "Accountability and Transparency under the Recovery Act" section of the program solicitation, awardees of Recovery Act funds must comply with the

extensive reporting requirements. Quarterly financial and programmatic reporting will be required; reports will be due **within 10 calendar days after the end of each calendar quarter**. Each Prime Recipient is required to submit reports containing the information required under section 1512 of the ARRA. All projects funded by the ARRA require the Military Department meet these certain state and federal reporting requirements. Pursuant to these regulations and the Governor's Executive Order No. 25, some of the information required has to be provided by the sub-recipient and/or vendor as applicable. The Military Department has developed a form (CTMD1065A) which needs to be completed and submitted, per instructions, by the fifth of each month. Once the first report is received, the Military Department will communicate with the sub-recipients and/or vendors and determine what data needs to be supplied on a monthly basis. Please visit <http://www.ct.gov/recovery/> and <http://www.recovery.gov/> for additional information regarding either Connecticut Recovery Initiatives and Reporting Requirements and Federal Recovery Requirements.

National Guard Bureau - Grants Debarment and Suspension: Specific terms and conditions which apply- Section 1512 of the Recovery Act provides information necessary to effectively implement the reporting requirements (estimate of jobs directly created or retained) which will detail information on the projects and activities funded by the Recovery Act. These reports will provide the public with an unprecedented level of transparency, accountability and administration on the projects funded by the Recovery Act. The Davis Bacon Act requirements, as well as Section 1605 of the Recovery Act (**Buy American provision**) apply. Additionally, the provisions set forth in Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Following is a quick guide to help you determine applicability of section 1606 to projects funded in part or in whole with Recovery Act funds:

Section 1606 of the ARRA – Wage Rate Requirements

- Applies to “all laborers and mechanics employed by contractors and subcontractors.”
- Applies to “...projects funded directly by or assisted in whole or in part by and through the Federal Government.”
- No requirement for direct employment on the site of work.
- No minimum dollar value.
- “Projects” (not specific to construction, alteration, and/or repair).
- No limitation to Public Buildings or Public Works of the U.S. or D.C.
- No geographical limits.
- Must pay wage rates not less than those determined by the Secretary of Labor in accordance with 40 USC 3141 – 3148 (Wage Rate Requirements).

APPENDIX A

ARTICLE VIII - REPRESENTATIONS AND CERTIFICATIONS

At the award of this Special Military Project Cooperative Agreement there are no final government-wide award terms to implement various sections of the American Recovery and Reinvestment Act of 2009. As such, interim award terms are included with the notation "Interim Award Term". These Interim Award Terms will govern until final government-wide language is promulgated. At that time, this agreement may require modification to insert the final award terms.

Section 801. Applicable Law.

This Agreement is incidental to the implementation of a Federal program. Accordingly, this shall be governed by and construed according to Federal law as it may affect the rights, remedies, and obligations of the United States.

Section 802. Governing Regulations.

To the extent not inconsistent with the express terms of this Agreement, the provisions of 32 CFR Part 33, Uniform Administrative Requirements for Grants and Cooperative Agreements, DoD Grant and Agreement Regulations (DODGARS) (DoD 321 0.6-R) as amended, Title 2 Code of Federal Regulations (CFR) Part 225, and NCR 5-1, are hereby incorporated into this Agreement by reference as if fully set forth herein.

Section 803. Nondiscrimination.

The State covenants and agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the State's performance under this Agreement. Accordingly, and to the extent applicable, the State covenants and agrees to comply with the following national policies prohibiting discrimination:

a. On the basis of race, color or national origin, in Title V I of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.

b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246(3 CFR, 1964-1 965 Comp. pg. 339), as implemented by Department of Labor regulations at 41 CFR part 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

Section 804. Lobbying.

a. The State covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal

actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any Agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

Section 805. Drug-Free Work Place.

The State Covenants and agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

Section 806. Environmental Protection.

a. The State covenants and agrees that its performance under this Agreement shall comply with the requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relate generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued there under; the Resources Conservation and Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA); the National Environmental Policy Act (NEPA); and Recovery Act (ACRA); and with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. Seq.) and Clean Water Act (33 U.S.C. 1251, et. Seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32; to identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.); and any applicable Federal, State or Local environmental regulation.

b. The State shall ensure that no facility used in its performance under this is listed on the Environmental Protection Agency (EPA) list of violating facilities pursuant to 40 CFR Part 15.5 without the concurrence of NOB. The State shall notify NOB of the receipt of any communication from EPA indicating that a facility to be or being used in its performance under this Agreement is under consideration for listing on the EPA list of violating facilities.

c. For the purposes of this section, NOB agrees that the State's obligations in paragraphs a. and b. of this section above shall not apply to any armory, base, training site, or other facility or portion thereof, the operation and maintenance of which is funded under this Agreement, that is currently or becomes, listed as a violating facility, on the effective date of this Agreement, pursuant to 40 CFR Part 15.5; nor, shall the listing be the basis for NOB's termination for cause of this Agreement or for NOB's disallowance of any cost otherwise allowable under this Agreement. Subject to the availability of funds, the State and NOB agree to cooperate to remediate, as expeditiously as possible, any facility the operation and maintenance of which is within the scope of this Agreement, the condition giving rise to the listing of any such facility as a violating facility according to applicable statutes, regulations, or other Agreements.

Section 807. Use of United States Flag Carriers.

- a. The State covenants and agrees that travel supported by U.S. Government funds under this Agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision 8138942.
- b. The State agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

Section 808. Debarment and Suspension.

The State covenants and agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. The Grantee agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Grantee enters into transactions that are “covered transactions” under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

Section 809. Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009—Construction Materials

(a) *Definitions.* As used in this award term and condition— “Building or work” means construction, maintenance, alteration, or repair. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not “building” or “work” within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

“Construction material” means an article, material, or supply brought to the construction site by the recipient, sub-recipient or a sub-contractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means—

- (1) An un-manufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Manufactured good or product” means a good or product used as construction material in a project that is the result of processing materials by way of machinery and/or labor that produce a substantially different article. Where the basic character, function, or kind of material processed remains the same, it is not manufactured.

“Manufactured construction material” means any construction material that is not un-manufactured construction material.”

“Public building or public work” means building or work, the construction, alteration, maintenance, or repair of which, as defined in this award term, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“Un-manufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“United States” means the 50 States, the District of Columbia, and outlying areas including:

- (1) Commonwealths- (i) Puerto Rico. (ii) The Northern Mariana Islands;
- (2) Territories. (i) American Samoa . (ii) Guam. (Hi) U.S. Virgin Islands; and
- (3) Minor outlying islands. (i) Baker Island. (ii) Howland Island. (Hi) Jarvis Island. (iv) Johnston Atoll. (v) Kingman Reef. (vi) Midway Islands. (vH) Navassa Island. (vHi) Palmyra Atoll. (ix) Wake Atoll.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act)(Pub. L. 111-5), by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States.

(2) The recipient shall use only domestic construction material in performing this project, except as provided in paragraph (b)(3) and (b)(4) of this term and condition.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

NONE

[Award official to list applicable excepted materials or indicate "none"]

(4) The award official may add other foreign construction material to the list in paragraph (b)(3) of this term and condition if the Federal government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(H) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(Hi) The application of the restriction of section 1605 of the Recovery Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1) (i) Any recipient request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(O) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(H) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(Hi) The price of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after award that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site.]*

Section 810. Required Use of American Iron, Steel, and Manufactured Goods (Construction Materials under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009 (Interim Award Term)

When awarding Recovery Act funds for construction, alteration, maintenance, or repair that involves construction materials covered under international agreements, the agency shall use the following award term:

(a) *Definitions.* As used in this award term and condition—“Building or work” includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not “building” or “work” within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

“Construction material” means iron, steel, and other manufactured goods used as construction material brought to the construction site by the recipient, sub-recipient, or sub-contractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems,

are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Designated country” --

(1) The World Trade Organization Government Procurement Agreement (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia)

“Designated country construction material” means a Construction material that -

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a construction material that Consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed is

“Foreign Construction material” means a construction material other than a domestic construction material.

“Manufactured construction material” means any construction material that is not un-manufactured Construction material.”

“Public building or public work” means building or work, the construction, alteration, maintenance, or repair of which, as defined in this Subpart, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“Un-manufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Construction materials.*

- (1) This award term and condition implements

- (i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

- (H) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country construction materials. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used as construction material in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services, or where the iron, steel or manufactured goods used as construction material in the project are from a least developed country. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

- (2) The recipient shall use only domestic or designated country construction material in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this term and condition.

- (3) The requirement in paragraph (b)(2) of this term and condition does not apply to the construction materials or components listed by the Government as follows:

- (4) The award official may add other construction material to the list in paragraph (b)(3) of this award term and condition if the Federal government determines that—

- (i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

- (H) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

- (Hi) The application of the restriction of section 1605 of the Recovery Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act*

- (1) (i) Any recipient request to use foreign construction material in accordance with paragraph(b)(4) of this term and condition shall include adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.
- (H) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph(d) of this clause.
- (Hi) The price of construction material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any recipient request for a determination submitted after award shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before award. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after award that an exception to section 1605 of the Recovery Act applies and the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in paragraph (b)(4)(i) of this term and condition

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act applies, use of foreign construction material other than designated country construction material is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number ,email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[Include all delivery costs to the construction site).]*

(End of award term)

Section 811. Uniform Relocation Assistance and Real Property Acquisition Policies.

The State covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.).

Section 812. Copeland "Anti-Kickback" Act.

The State covenants and agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874) **as supplemented** in Department of Labor regulations (29 CFR Part 3). **As applied to** this Agreement, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

Section 813. Contract Work Hours and Safety Standards Act.

The State covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this Agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this Agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

Section 814. National Historic Preservation. *(Any construction, acquisition, modernization, or other activity that may impact a historic property.)*

The ContractorNendor agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR Part 800 and Executive Order 11593(3 CFR, 1971-1975 Comp., p.559).

(36 CFR Part 800 requires Grants Officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.)

Section 815. Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009 (Interim Award Term)

- (a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and**
subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the

Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Following is a quick guide help you determine applicability of section 1606 to projects funded in part or in whole with Recovery Act funds:

Section 1606 of the American Recovery and Reinvestment Act of 2009 - Wage Rate Requirements

- Applies to “all laborers and mechanics employed by contractors and subcontractors.”
- Applies to “. . . projects funded directly by or assisted in whole or in part by and through the Federal Government”
- No requirement for direct employment on the site of work.
- No minimum dollar value.
- “Projects” (not specific to construction, alteration, and/or repair).
- No limitation to Public Buildings or Public Works of the U.S. or D.C.
- No geographical limits.
- Must pay wage rates not less than those determined by the Secretary of Labor in accordance with 40 USC 3141 — 3148 (Wage Rate Requirements).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency.

Section 816. Reporting and Registration Requirement under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Interim Award Term)

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The first report is due no later than ten days after the initial calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act, or July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds.

(d) The recipient shall report the following information, using the reporting instructions that will provided online at www.FederalReporting.gov, unless the information is pre-populated—**Following** are the Government wide standard set of data elements for reporting information under sections 1512(c) and 1609(c) of the American Recovery and Reinvestment Act of 2009, Public Law 111-S (“Recovery Act”).

Section 817. Whistleblower Protection. (Interim Award Term)

Each recipient or sub-recipient awarded funds made available under the (RA) shall promptly refer to the Department of Defense, Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. ((RA)

Section 1883) The Department of Defense, Office of Inspector General can be reached at 800-424-9098 or by e-mail: hotline@dodig.mil

Section 818. Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-recipients (Interim Award Term)

(a) **To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215, subpart ~. 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.**

(b) **For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-i 33, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-i 33. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "(RA)-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.**

(c) Recipients agree to separately identify to each sub recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub recipients shall distinguish the sub awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of Recovery Act funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.